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Before the  
FEDERAL COMMUNICATIONS COMMISSION

JAN 30 1997

## **I. BACKGROUND AND PRELIMINARY STATEMENT**

AAR is a voluntary non-profit organization composed of railroad companies operating in the United States, Canada and Mexico. AAR's member railroads use private microwave facilities to monitor and control more than 1.2 million freight cars on more than 215,000 miles of track. For example, microwave systems automatically transmit signals and remotely control switching of tracks necessary for safe routing of trains through busy depots and freight yards. These systems also relay critical telemetry data from trackside defect detectors located throughout the rail network and are vital to coordination of operations among railroads.

Because of its 2 GHz microwave operations, AAR has been actively involved in every stage of this proceeding. AAR's paramount concern is to ensure that deployment of new technologies does not threaten the safety and reliability of railroads' private fixed microwave operations.

## **II. PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

On November 30, 1992, petitions for clarification and/or reconsideration of the Order and Notice were filed by the Utilities Telecommunications Council ("UTC"), American Public Power Association ("APPA"), the Pacific Telesis Group ("PacTel") and Apple Computer, Inc. ("Apple"). The petitions raised the following issues: (1) UTC and APPA requested clarification that all state and local government licensees, not just "public safety" licensees, are exempt from involuntary relocation

procedures; (2) UTC and PacTel requested clarification that engineering, constructing and testing of new facilities for displaced microwave licensees may be performed by, or under the direction of, the microwave licensee, even though the emerging technology provider must pay for such activities; (3) UTC requested clarification that microwave licensees will privately own replacement facilities, even though the emerging technology provider must pay for such facilities; (4) UTC requested clarification that a microwave licensee may not be relocated to non-microwave replacement facilities unless the microwave licensee specifically agrees to such alternative facilities; and (5) PacTel requested clarification that the costs of removal and disposal of existing facilities be included in "reasonable additional costs" that microwave licensees may incur as a result of relocation.<sup>3</sup>

### **III. MICROWAVE LICENSEES CAN ENGINEER AND TEST NEW FACILITIES.**

AAR agrees with UTC and PacTel that the Commission should clarify that engineering, construction and testing of new facilities for displaced microwave licensees may be performed by, or under the direction of, the microwave licensee, even though the emerging technology provider must pay for such activities. As currently drafted, the proposed rules direct the new

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<sup>3</sup> On January 13, 1993, Apple partially withdrew its petition regarding the effective date of the rules attached to the Order and Notice. AAR agrees that the rules cannot become effective until the Commission resolves the outstanding issues in this proceeding.

technology provider to perform these tasks, as well as necessary frequency coordination. In most cases, it would be more efficient and practical for the displaced licensee to design and build the new system. The rules should be flexible enough to permit microwave licensees to conduct these activities.

#### **IV. MICROWAVE LICENSEES WILL OWN NEW FACILITIES.**

AAR agrees with UTC that the Commission should clarify its rules to specify that any new facilities provided through involuntary relocation will be owned by the microwave licensee, even though the emerging technology entrant must provide the facilities. Railroads own and maintain their own private communications systems because they cannot rely on common carriers or other third parties that have competing service demands and are unfamiliar with railroads' unique operational requirements. The Commission has recognized the need for railroads and other industries to operate private systems and should clarify in this proceeding that replacement facilities provided under the transition plan will be owned by the microwave incumbent.

#### **V. MICROWAVE LICENSEES HAVE OPTION TO AGREE TO NON-MICROWAVE REPLACEMENT FACILITIES.**

AAR agrees with UTC that the Commission should clarify that microwave licensee may not be relocated to non-microwave replacement facilities unless the microwave licensee specifically agrees to such alternative facilities. This follows from the requirement that the emerging technology entrant provide

"comparable alternative facilities" to the displaced microwave licensee. In some circumstances, due to atmospheric or geographic conditions, fiber optics or other alternatives do not provide performance and reliability comparable to microwave facilities. For example, microwave systems are the only practical alternative for railroads operating in mountainous terrain. In such circumstances, non-microwave facilities would be unacceptable. The rules should not permit emerging technology entrants to relocate incumbent microwave licensees to non-microwave facilities unless the incumbent licensee agrees that such facilities would be acceptable. Involving the microwave licensee in engineering and constructing the new facilities, as discussed in Section III, will help ensure that the new facilities will meet the licensee's operational and reliability requirements.

**VI. COSTS OF REMOVAL AND DISPOSAL OF EXISTING FACILITIES ARE COMPENSABLE.**

AAR agrees with PacTel that the Commission should clarify that the costs of removal and disposal of existing facilities are included in "reasonable additional costs" microwave licensees may incur as a result of relocation. More generally, the Commission should clarify that it will include as "reasonable additional costs" any other expenses, not currently specified or even foreseeable, that a microwave licensee incurs as a result of relocation.

Respectfully submitted,

**ASSOCIATION OF AMERICAN RAILROADS**

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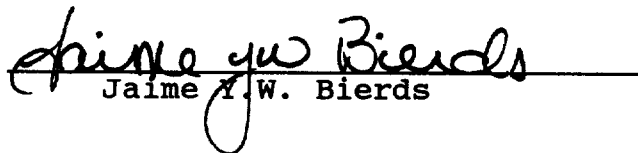
March 30, 1993

**CERTIFICATE OF SERVICE**

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